

07 CV 3851

Marc S. Dreier (MD-9713)
Joel A. Chernov (JC-8789)
Regina M. Alter (RA-7014)
DREIER LLP
499 Park Avenue
New York, New York 10022
(212) 328-6100

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERTO BAUTISTA FRANCO BACCANELLI, :
Plaintiff, :
07 CV ____ (TPG)
-against- :
THE REPUBLIC OF ARGENTINA, : COMPLAINT
Defendant. :
-----x

Plaintiff, by his attorneys, Dreier LLP, for his Complaint alleges as follows:

The Parties

1. Plaintiff Roberto Bautista Franco Baccanelli is a citizen of defendant The Republic of Argentina (“Argentina”). Mr. Baccanelli acquired certain bonds, ISIN Nos. XS0043118172 and XS0043119147, issued by Argentina pursuant to a USD Discount Bond and Par Bond Fiscal Agency Agreement, dated as of April 7, 1993 (the “DPB FAA”), in the principal amounts of \$341,000 and \$972,000, respectively. A copy of the DPB FAA is annexed hereto as Exhibit A.

2. Defendant Argentina is a foreign state as defined in 28 U.S.C. § 1603(a).

Jurisdiction

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1330.

4. Venue is proper in this district by agreement of the parties and pursuant to 28 U.S.C. § 1391(f).

COUNT ONE

5. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 4 as if set forth here at length.

6. As set forth above, plaintiff Mr. Baccanelli acquired certain bonds issued by Argentina pursuant to the DPB FAA (the "DPB Bonds") and continues to own those bonds.

7. Pursuant to Section 16 of the DPB FAA, Argentina (i) appointed Banco de la Nacion Argentina as its agent for service of process, (ii) agreed to submit to the jurisdiction of this Court, and (iii) agreed to waive any claim of immunity, including, but not limited to, sovereign immunity.

8. Pursuant to the "Form of Discount Bond and Par Bond," which is annexed as Exhibit 1 to the Collateralized Discount Bond and Par Bond Exchange Agreement, dated as of December 6, 1992, annexed hereto as Exhibit B (the "1992 Bond Form"), the following, *inter alia*, are defined as "Events of Default:"

(a) interest on any Bond is not paid when due and such default continues for a period of at least 30 days; or

(b) Argentina fails to pay the principal amount of any Bond called for redemption when due for a period of 15 days; or

...

(d) Argentina defaults in the performance of any other obligation contained in the Bonds or the other Principal Bond Agreements relating to the Bonds and such default shall continue for a period of 90 days after written notice thereof shall have been given to Argentina at the office of the Fiscal Agent by any registered holder; or

(e) (i) the holders of 25% or more in aggregate outstanding principal amount of any issue or series of

Publicly Issued External Indebtedness of Argentina or any Designated Argentine Governmental Agency (including any Other Bonds), as a result of any failure to pay the principal of, or interest on, such Publicly Issued External Indebtedness, accelerate such Publicly Issued External Indebtedness or declare such Publicly Issued External Indebtedness to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof and such acceleration, declaration or prepayment shall not have been annulled or rescinded within 30 days thereof or (ii) Argentina or any Designated Argentine Governmental Agency fails to pay the principal of any such Publicly Issued External Indebtedness when due (after expiration of any applicable grace period), or (iii) Argentina fails to pay any interest when due under any Other Bonds (after expiration of any applicable grace period); or

(f) Argentina declares a moratorium with respect to the payment of principal of, or interest on, Publicly Issued External Indebtedness or Argentina

1992 Bond Form at pp. 24-25.

9. The 1992 Bond Form further provides that "if such [Event of Default] is continuing, registered holders of 25% or more in aggregate outstanding principal amount of the [DPB] Bonds may, by written demand to Argentina at the office of the Fiscal Agent, declare the [DPB] Bonds immediately due and payable," together with all accrued interest. *See* 1992 Bond Form at p. 26.

10. In or about December 2001, Argentina declared a moratorium on the payment of principal and interest with respect to all of its foreign debt, including all payments due under the DPB Bonds.

11. Since December 2001, Argentina has failed to make any payment of principal or interest to plaintiff Mr. Baccanelli.

12. In or about February 13, 2007, pursuant to Section 10(e) of the 1992 Bond Form, the Fiscal Agent communicated to the holders of the DPB Bonds that the Fiscal Agent

received written communication from the holders of more than 25% of the principal amount outstanding of the DPB Bonds and have declared all of the DPB Bonds to be immediately due and payable (the "Notice"). A true and correct copy of the Notice is annexed hereto as Exhibit C.

13. By reason of the foregoing, there has been an Event of Default on the DPB Bonds, all of the DPB Bonds are now due and payable, including those held by Mr. Baccanelli, and Argentina is in breach of its obligations under the DPB FAA.

14. By reason of the foregoing, Argentina has breached its contractual obligations to plaintiff Mr. Baccanelli and is liable for damages in an amount to be determined at trial, plus interest.

WHEREFORE, plaintiff demands judgment as follows:

- i. On Count One, awarding plaintiff Mr. Baccanelli damages against Argentina in an amount to be determined at trial, plus interest; and
- ii. Awarding plaintiff its costs, prejudgment interest, attorneys' fees and such other and additional relief as the Court deems just and proper.

Dated: New York, New York
May 15, 2007

DREIER LLP

By: 

Marc S. Dreier (MD-9713)
Joel A. Chernov (JC-8789)
Regina M. Alter (RA-7014)

499 Park Avenue
New York, New York 10022
(212) 328-6100
Attorneys for Plaintiff